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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1979

NO. 79-271

David Bridger, Jr. ..... *Petitioner*

V.

State of Arkansas ..... *Respondent*

PETITION FOR WRIT OF CERTIORARI
TO THE ARKANSAS SUPREME COURT

~~JURISDICTIONAL STATEMENT~~

DAVID BRIDGER, JR.
General Delivery
Hagarville, Arkansas 72839

Pro se

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PETITION FOR WRIT OF CERTIORARI
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~~JURISDICTIONAL STATEMENT~~

The Petitioner, David Bridger, Jr., petitions this Court for a Writ of Certiorari to review the final order and opinion of the Supreme Court of Arkansas, entered January 8, 1979, affirming the judgment of the forfeiture of his bond and reinstating the judgment of the Municipal Court and submits this statement to show that the United States Supreme Court has jurisdiction of this petition and that a substantial question is presented.

OPINION BELOW

The opinion of the Supreme Court of Arkansas is reported in 264 Ark. 789 advance sheets and is set forth in Appendix A to the Jurisdictional Statement.

JURISDICTION

The opinion of the Supreme Court of Arkansas was delivered on January 8, 1979, affirming the judgment of the Johnson County Circuit Court forfeiting petitioner's bond and reinstating the judgment and order of the Municipal Court. Notice of Appeal and Motion to Stay the Mandate of the Arkansas Supreme Court and to remain on bond wre filed in the Arkansas Supreme Court on January 30, 1979. Pending appeal to the United States Supreme Court or pending petition for Writ of Certiorari, the above stated were all granted March 7, 1979, by the Arkansas Supreme Court.

The jurisdiction of the United States Supreme Court to review this decision by appeal or petition for Writ of Certiorari is conferred by 28 U.S.C. 1257.

UNITED STATES CONSTITUTIONAL PROVISIONS INVOLVED

The United States Constitutional Provisions involved are Amendments 6 and 14 and can be found in U.S.C.A., Constitution, Amendment 6 to 14, page 223.

Amendment 6 provides as follows:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury * * *

Amendment 14 provides as follows:

> * * * No State shall make or enforce any law which shall abridge the privilege of immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

QUESTIONS PRESENTED

1. Was petitioner denied due process of law and a fair and impartial trial when the trial court and the Arkansas Supreme Court permitted the forfeiture of bond and the reinstatement of the Municipal Court's judgment and orders in the absence of petitioner on the mere showing that a letter had been mailed and had not been returned stating on April 20, 1978, that the Circuit Court of Johnson County would convene at 9:00 a.m., Wednesday, May 17, 1978, this being the first day of the term of court? No trial date had been previously set by the Court.

STATEMENT

On May 11, 1976, petitioner was charged by information for driving while under the influence of intoxicating liquor. Upon conviction in Municipal Court, petitioner appealed to Circuit Court, again was found guilty, then appealed to Arkansas Supreme Court, which reversed his conviction and remanded the matter to Johnson County Circuit Court.

The matter was again brought before the Court on May 17, 1978. Without notice of any kind whatsoever to petitioner, in his absence the trial Court forfeited his bond and reinstated the judgment and orders of the Municipal Court.

Petitioner appealed the judgment to the Arkansas Supreme Court. On January 8, 1979, that Court delivered its opinion affirming the judgment of the Johnson County Circuit Court. Petitioner petitions this Court for a Writ of Certiorari to review the final judgment of the Arkansas Supreme Court.

ARGUMENT

Petitioner believes that the question presented herein is substantial and requires plenary consideration and warrants briefs on the merits and oral argument for resolution of the question. The reason the question is substantial is set out below.

The opinion of the Supreme Court of Arkansas has placed an intolerable and unconstitutional burden on a criminal defendant. It is clear that Arkansas is in bad faith in this matter. A defendant has no duty to bring himself to trial (*Dickey v. Florida*, 398 US 30, 1970). The State has the duty as well as the duty of insuring that the trial is consistent with due process (*Barker v. Wingo*, 407 US 514, 1972). At a minimum, this would surely mean notice before trial and certainly opportunity of hearing before any adjudication may be made to meet the minimum requirement of due process of law (*Goss v. Lopez*, 419 US 565, 1975).

Petitioner was given no notice and certainly no opportunity for hearing, which further denied him a public trial by an impartial jury, which is guaranteed by our Constitution, both federal and state.

This practice of forfeiting defendants' bond and upholding Municipal Courts' judgments and orders without notice should not be permitted and this Court should stop it if due process and a fair trial are going to mean anything in Arkansas.

CONCLUSION

Petitioner submits that for the above reasons jurisdiction should be noted and the Petition accepted for decision.

Respectfully submitted,

DAVID BRIDGER, JR.
General Delivery
Hagarville, Arkansas 72839

Pro se

NOTE: Revised and Resubmitted by direction of Court.

EXHIBIT A

IN THE SUPREME COURT OF
THE STATE OF ARKANSAS

No. CR 78-153

Opinion Delivered January 8, 1979.

DAVID BRIDGER, JR., Appellant, V.	Appeal from Johnson Circuit Court; John Lineberger, Judge by Assignment.
STATE OF ARKANSAS, Appellee.	Affirmed.

GEORGE ROSE SMITH,
Associate Justice

GEORGE ROSE SMITH, J. The appellant Bridger was convicted in the Clarksville municipal court of driving while under the influence of intoxicants. On appeal to the circuit court he was again found guilty. This is the second appeal to this court, both appeals having been conducted *pro se* by Bridger, who is not a lawyer. On the first appeal, in an unpublished opinion, we reversed the judgment because of an error in the admission of evidence and remanded the case for further proceedings.

After the remand the circuit clerk, by a letter dated April 20, 1978, notified Bridger that the case would be heard at 9:00 a.m. on May 17, 1978. On that date Bridger failed to

appear in court. The State called the circuit clerk as a witness, who testified that the notice had been sent to Bridger by mail and that the letter had not been returned. The court found that Bridger had willfully failed to appear, directed that his bond be forfeited, and reinstated the judgment of the municipal court. The circuit court's judgment was entered on May 31. Bridger, without seeking relief in the trial court, filed his notice of appeal on June 27. In his five-sentence *pro se* brief in this court Bridger states that he did not receive personal or constructive notice of the hearing and that as a result of that omission the order of dismissal has deprived him of due process of law and equal protection.

When, as here, the trial court has acquired jurisdiction of the defendant, it is customary and proper for notice of the trial date to be given by mail. If Bridger did not receive notice of the date of trial he could have filed an application for relief in the trial court within the time allowed for the filing of a notice of appeal. Ark. Stat. Ann. §43-2704 (Repl. 1977). Evidence could have been heard, and relief could have been granted if proper. Instead, Bridger (who, as we have said, is not an attorney) elected to file only a notice of appeal. According to the record, judgment was properly entered upon his failure to appear for trial. Of course, the record cannot be contradicted or supplemented by statements made in the briefs. Owing to Bridger's failure to pursue his available remedy in the trial court he is not entitled to relief here.

Affirmed.

We agree. Harris, C.J., and Bryd and Purtle, JJ.

EXHIBIT B

IN THE SUPREME COURT
OF THE STATE OF ARKANSAS

David Bridger, Jr. ..... Appellant

VS NO. CR. 77-44

STATE OF ARKANSAS..... Appellee

MOTION FOR STAY OF MANDATE

Comes appellant, DAVID BRIDGER, JR., who respectfully requests a stay of the mandate in this cause for the following reasons:

I.

That DAVID BRIDGER, JR. desires and intends to prosecute proceedings in the Supreme Court of the United States by petition for writ of certiorari to review the decision in this cause or by writ of error by direct appeal.

II.

There exists in this cause bona fide questions arising under the United States Constitution regarding the validity of the notice, procedure and opportunity of hearing, etc., in the above case and the validity of the Arkansas Rules of Criminal Procedure.

III.

Appellant has tendered to said Clerk the sum of $50.00 in accordance with Rule 22(c) Arkansas Supreme Court rule and has ordered a copy of the record in this cause.

IV.

Appellant is currently released on an appeal bond. Said bond is wholly sufficient.

WHEREFORE, appellant prays that this Court stay the mandate in this cause.

Respectfully submitted,

David Bridger, Jr.

DAVID BRIDGER, JR.
General Delivery
Hagarville, AR 72839

FILED
JAN. 30, 1979
JIMMY H. HAWKINS
CLERK

VERIFICATION

STATE OF ARKANSAS

COUNTY OF JOHNSON

I, David Bridger, Jr., after being duly sworn, hereby state on oath that all matters stated in the above Motion For Stay Of Mandate are true and correct to the best of my knowledge and belief.

David Bridger, Jr.

David Bridger, Jr.

Subscribed and sworn to before me this 29 day of January, 1979.

(SEAL)
My term expires:
December 31, 1980

Betty Hardgrave

Betty Hardgrave
Circuit Clerk

CERTIFICATE OF SERVICE

This certifies that I, David Bridger, Jr., have served a true and correct copy of the foregoing Motion For Stay of Mandate upon the following persons by mailing same this _____ day of January, 1979:

Honorable John Lineberger
P. O. Drawer BB
Fayetteville, AR 72701

Mr. Steve Clark
Attorney General
Justice Building
Little Rock, AR 72201

Mr. Alex Streett
P. O. Drawer F
Russellville, AR

David Bridger
David Bridger, Jr.